IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF: Chapter 13

Andrew Lee Tyler, Jr. and
Berand Michele Tyler Case No. 15-64921-jrs

Debtors.

Berand Michele Tyler,

Plaintiff, Adv. Proc. No. ________
vs.

Porania, LLC and Jeffrey S. Dunn,
individually,

Defendants.

COMPLAINT SEEKING DAMAGES IN ADVERSARY PROCEEDING

INTRODUCTION

This is an action for damages and equitable relief based upon the Defendants' overt and intentional unlawful conduct in the furtherance of its efforts to collect a consumer debt. The Defendants' conduct is in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, and the Georgia Fair Business Practices Act, ("GFBPA") O.C.G.A. § 10-1-399, *et seq*. These claims arise as a result of Defendants' overt and intentional conduct.

JURISDICTION AND VENUE

1. This is a core proceeding as defined by 28 U.S.C. § 157, and this is a matter arising in a case under Title 11.

2. This Court has proper matter jurisdiction pursuant to 28 U.S.C. § 157(b) and § 1334.

3. Jurisdiction is conferred on this Court by 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331 and 1337. Supplemental jurisdiction of the state law claims is conferred by 28 U.S.C. § 1367. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. The Plaintiff is a debtor in the underlying Chapter 13 pending in this Court, case number 15-64921-jrs.

5. Defendant, Porania, LLC (hereinafter "Porania"), is a limited liability corporation organized under the laws of the State of Delaware.

6. Poraniais in the business of purchasing, aggregating collecting, and re-selling consumer debt.

7. Defendant, Jeffrey S. Dunn, is, upon information and belief, an individual employed by Defendant Porania and has specialized training in the review of delinquent accounts and preparation of Proofs of Claim to be filed in bankruptcy cases.

8. The Defendants have entered the Plaintiff's Chapter 13 alleging that Porania is the assignee and rightful holder of a debt originated by a third-party, SpotLoan.com.

9. Defendant Jeffrey S. Dunn personally completed the Proof of Claim that gives rise to this action, presumably after having reviewed the relevant account information.

FACTUAL ALLEGATIONS

10. The Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

11. Defendant Porania is a "debt collector" as defined by 15 U.S.C. §§ 1692a(5) and (6).

12. On August 5, 2015, Plaintiff's Chapter 13 proceeding was commenced by the filing of a voluntary petition with the Clerk of this Court.

13. On November 2, 2015, Defendants filed a Proof of Claim (Number 11) in the amount of $600.00, alleging that they are the assignee and rightful holder of a debt originated by a third-party, SpotLoan.com. See, Claim 11, Page 1.

14. The proof of claim identifies as the basis of the debt "money loaned" (Claim 11, page 1)

15. Attached to Defendants' POC is a document titled "Proof of Claim Exhibit", which ostensibly shows the details of the account .

16. The debt being collected by Defendants was not scheduled in Plaintiff's Bankruptcy Case and was unknown to her.

17. Defendants' Claim asserts that they are the rightful owner of the debt, but the Claim does not contain any documents purporting to be an assignment or sale of the debt being collected from SpotLoan.com to Porania.

18. Upon information and belief, "Spotloan" is a brand owned by Blue Chip Financial which is itself a tribally-owned entity organized and governed by the laws of the Turtle Mountain Band of Chippewa Indians of North Dakota. https://www.spotloan.com/

19. Neither Spotloan nor Blue Chip financial are licensed by the State of Georgia under the Georgia Industrial Loan Act.

20. Upon information and belief, the loan referenced in Defendants' Claim was a "payday" loan, as defined by O.C.G.A. § 16-17-1 and no exception as contained in § 16-17-2(a) applies to this loan.

21. The loan collected by Defendants was illegal as of inception, and the alleged debt is unenforceable under Georgia law. See, O.C.G.A. § 16-17-2.

22. At the time they filed their Claim, Defendants knew or should have known they were attempting to collect an unlawful and unenforceable debt.

23. Defendants have not complied with Fed. R. Bankr. P. 3001(c)(1).

DAMAGES

24. As a result of Defendants' actions, Plaintiff has suffered actual damages,

including out-of-pocket expense to travel to meet with counsel; consumption of resources in the form of her attorney time and resources in challenging an unlawful claim; potential harm through possible payment of an unenforceable clam; and worry over the repercussions of Defendants' unlawful conduct.

FIRST CLAIM FOR RELIEF -- OBJECTION TO CLAIM

25. Plaintiff repeats and realleges paragraphs 1-23 as though more fully set forth herein.

26. The Debtor objects to Defendants' Proof of Claim on the grounds that it is unenforceable under Georgia law, per the supporting documentation filed by the Defendants, and is therefore objectionable under 11 U.S.C. § 502(b)(1) and should be disallowed.

27. The Debtor objects to Defendant's proof of claim on the grounds that Defendants have not complied with Fed. R. Bankr. P. 3001(c)(1) such that it is impossible for debtor or debtor's counsel to ascertain the veracity of the claim.

COUNT I

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT ("FDCPA") 15 U.S.C. 1692, *et seq*.

28. Plaintiff repeats and realleges the preceding paragraphs 1-23 as though more fully set forth herein.

29. Defendants' filing of their POC was an attempt to collect a consumer debt.

30. The Defendants have made numerous false, deceptive and misleading statements in its attempt to collect a consumer debt in violation of 15 U.S.C. §§ 1692e and 1692f.

31. The acts and omissions by Defendants constitute violations of the FDCPA including, but not limited to, collecting or attempting to collect amounts not permitted by law and by otherwise using unfair and deceptive methods in direction violation of 15 U.S.C. 1692f(1).

32. The Plaintiff has suffered actual damages as a result of Defendants' conduct as described herein.

33. As a result of Defendants' violations of the FDCPA, Defendants are liable to Plaintiff for actual damages, statutory damages in the amount of $1,000.00, costs of this action and reasonable attorney's fees as determined by the Court as mandated by 15 U.S.C. § 1692k.

COUNT II

VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICE ACT O.C.G.A. 10-1-399, *et seq.*

34. Plaintiff incorporates by reference paragraphs 1-23 and 28-32 as though fully stated herein.

35. The GFPBA directs liberal interpretation and application, as well as harmony with the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which implements the FDCPA.

36. Defendants willfully engaged in unfair and deceptive practices to collect a consumer debt.

37. O.G.C.A. § 10-1-393(a) broadly prohibits unfair business practices, not limited to the exemplar list in the preceding subsection.

38. Defendants do not maintain a place of business in Georgia and have no assets in Georgia thus relieving the Plaintiff of the Notice and Demand requirement of O.G.C.A. § 10-1-399(b).

39. As a result of Defendants' violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover general damages as described herein pursuant to O.G.C.A. § 10-1-399(a).

40. Defendants' actions were intentional and/or knowing, rendering them liable for exemplary damages pursuant to O.G.C.A. §§ 10-1-399(a) and (c).

41. Plaintiff is entitled to recover reasonable attorney's fees and expenses pursuant to O.G.C.A. § 10-1-399(d).

WHEREFORE, the Plaintiff having set forth her claims for relief against the Defendants respectfully prays of the Court as follows:

A. That Proof of Claim Number 11 be disallowed;

B. That the Court award actual damages in an amount to be shown at trial, statutory damages in the amount of $1,000.00, costs and reasonable attorney's fees as determined by the Court pursuant to 15 U.S.C. § 1692k; and

C. That the Court award actual and exemplary damages pursuant to O.G.C.A. §§ 10-1-399(a) and (c);

D. That the Court award reasonable attorney's fees and expenses pursuant to 15 U.S.C. § 1692k and O.G.C.A. § 10-1-399(d); and

E. That the Plaintiff have such other and further relief as the Court may deem just and proper.

This the 27th day of October, 2016.

Respectfully submitted,

*/s/ Matthew T. Berry*________

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